

SENATE BILL 193

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2004 Regular Session
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By: **The President (By Request - Administration) and Senators Astle,
Brinkley, Dyson, Greenip, Hafer, Harris, Hooper, Jacobs, Kittleman,
Pipkin, and Schrader**

Introduced and read first time: January 23, 2004

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Injury Compensation Reform Act**

3 FOR the purpose of establishing a certain limitation on noneconomic damages for
4 medical injuries for causes of action arising on and after a certain date;
5 providing that this limitation applies in the aggregate to all claims arising from
6 the same medical injury; requiring the itemization of certain awards and
7 verdicts; providing that certain provisions relating to advanced payments do not
8 apply to certain causes of action; allowing certain parties in cases involving
9 medical injuries to make certain offers of judgment; establishing procedures
10 relating to offers of judgment; requiring a party who does not accept an offer of
11 judgment to pay certain costs and attorney's fees if the judgment obtained is not
12 more favorable than the offer of judgment; prohibiting a jury from being
13 informed of certain limitations; requiring that an award or verdict of economic
14 damages exclude certain amounts for past or future medical expenses and past
15 or future loss of earnings; requiring periodic payments of certain damages in
16 excess of a certain amount for certain causes of action; establishing procedures
17 and requirements relating to periodic payments and annuities for funding
18 periodic payments; providing that certain provisions relating to damages in
19 personal injury and wrongful death cases apply to causes of action for medical
20 injuries arising before a certain date and do not apply to causes of action for
21 medical injuries arising on or after a certain date; defining certain terms;
22 making the provisions of this Act severable; and generally relating to medical
23 injury compensation reform.

24 BY repealing and reenacting, with amendments,
25 Article - Courts and Judicial Proceedings
26 Section 3-2A-01, 3-2A-05(e), 3-2A-06(f), 3-2A-08, 3-2A-09, 11-108(c), and
27 11-109(c) and (d)
28 Annotated Code of Maryland
29 (2002 Replacement Volume and 2003 Supplement)

30 BY adding to
31 Article - Courts and Judicial Proceedings

1 Section 3-2A-08.1, 3-2A-09, 3-2A-10, 11-108(e), and 11-109(d) and (e)
2 Annotated Code of Maryland
3 (2002 Replacement Volume and 2003 Supplement)

4 Preamble

5 WHEREAS, Access to affordable medical malpractice insurance by health care
6 providers such as physicians, hospitals, nursing homes, assisted living facilities,
7 continuing care communities, osteopaths, optometrists, chiropractors, nurses,
8 dentists, podiatrists, psychologists, social workers, physical therapists, medical day
9 care centers, and hospice care programs is critical to Maryland's nationally recognized
10 health care delivery system; and

11 WHEREAS, When medical malpractice insurance becomes unaffordable or
12 unavailable for health care providers, critical health care services become restricted
13 or even unavailable and the quality of medical care available to Maryland patients is
14 diminished; and

15 WHEREAS, Maryland has taken significant steps in establishing patient
16 safety and provider accountability, including establishment of a hospital report card
17 system, and a Patient Safety Coalition to promote patient safety awareness and
18 education, the sharing of best practices, and the strengthening of oversight of adverse
19 medical events; and

20 WHEREAS, Nationally and in Maryland malpractice premiums and costs
21 have skyrocketed and malpractice insurance is becoming unaffordable and
22 unavailable in the State; and

23 WHEREAS, Excessive premiums for medical malpractice insurance divert
24 needed resources away from patient care and are a drain on the State budget; and

25 WHEREAS, Legislative reforms are needed to ensure the continued
26 availability and affordability of medical malpractice insurance for health care
27 providers and the provision of health care services in the State; now, therefore,

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That the Laws of Maryland read as follows:

30 **Article - Courts and Judicial Proceedings**

31 3-2A-01.

32 (a) In this subtitle the following terms have the meanings indicated unless the
33 context of their use requires otherwise.

34 (B) "ANNUITY" MEANS AN AGREEMENT TO MAKE PERIODIC PAYMENTS FOR
35 THE PERIOD OF TIME DETERMINED UNDER § 3-2A-10 OF THIS SUBTITLE.

1 [(b)] (C) "Arbitration panel" means the arbitrators selected to determine a
2 health care malpractice claim in accordance with this subtitle.

3 [(c)] (D) "Court" means a circuit court for a county.

4 [(d)] (E) "Director" means the Director of the Health Claims Arbitration
5 Office.

6 (F) "ECONOMIC DAMAGES" MEANS:

7 (1) PAST MEDICAL EXPENSES;

8 (2) FUTURE MEDICAL EXPENSES;

9 (3) PAST LOSS OF EARNINGS; AND

10 (4) FUTURE LOSS OF EARNINGS.

11 [(e)] (G) "Health care provider" means a hospital, a related institution as
12 defined in § 19-301 of the Health - General Article, A MEDICAL DAY CARE CENTER, A
13 HOSPICE CARE PROGRAM, a physician, an osteopath, an optometrist, a chiropractor, a
14 registered or licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed
15 certified social worker-clinical, and a physical therapist, licensed or authorized to
16 provide one or more health care services in Maryland. "Health care provider" does not
17 mean any nursing institution conducted by and for those who rely upon treatment by
18 spiritual means through prayer alone in accordance with the tenets and practices of a
19 recognized church or religious denomination.

20 (H) "MEDICAL EXPENSES" MEANS ANY COSTS THAT HAVE BEEN OR WILL BE
21 INCURRED BY OR ON BEHALF OF THE CLAIMANT AS A RESULT OF A MEDICAL INJURY,
22 INCLUDING THE COSTS OF MEDICAL AND HOSPITAL, REHABILITATIVE, RESIDENTIAL
23 AND CUSTODIAL CARE AND SERVICE, SPECIAL EQUIPMENT OR FACILITIES, AND
24 RELATED TRAVEL.

25 [(f)] (I) "Medical injury" means injury arising or resulting from the rendering
26 or failure to render health care.

27 (J) "NONECONOMIC DAMAGES" MEANS:

28 (1) IN A CLAIM FOR PERSONAL INJURY, PAIN, SUFFERING,
29 INCONVENIENCE, PHYSICAL IMPAIRMENT, DISFIGUREMENT, LOSS OF CONSORTIUM,
30 OR OTHER NONPECUNIARY INJURY; OR

31 (2) IN A CLAIM FOR WRONGFUL DEATH, MENTAL ANGUISH, EMOTIONAL
32 PAIN AND SUFFERING, LOSS OF SOCIETY, COMPANIONSHIP, COMFORT, PROTECTION,
33 CARE, MARITAL CARE, PARENTAL CARE, FILIAL CARE, ATTENTION, ADVICE,
34 COUNSEL, TRAINING, GUIDANCE, OR EDUCATION, OR OTHER DAMAGES OTHER THAN
35 ECONOMIC DAMAGES AUTHORIZED UNDER SUBTITLE 9 OF THIS TITLE.

1 3-2A-05.

2 (e) The arbitration panel shall first determine the issue of liability with
3 respect to a claim referred to it. If the arbitration panel determines that the health
4 care provider is not liable to the claimant or claimants the award shall be in favor of
5 the health care provider. If the arbitration panel determines that a health care
6 provider is liable to the claimant or claimants, it shall then consider, itemize, assess,
7 and apportion appropriate damages against one or more of the health care providers
8 that it has found to be liable. [The award shall itemize by category and amount any
9 damages assessed for incurred medical expenses, rehabilitation costs, and loss of
10 earnings. Damages assessed for any future expenses, costs, and losses shall be
11 itemized separately.] THE ARBITRATION PANEL SHALL ITEMIZE THE AWARD TO
12 REFLECT THE MONETARY AMOUNT INTENDED FOR PAST MEDICAL EXPENSES,
13 FUTURE MEDICAL EXPENSES, PAST LOSS OF EARNINGS, FUTURE LOSS OF EARNINGS,
14 NONECONOMIC DAMAGES, AND OTHER DAMAGES.

15 3-2A-06.

16 (f) [Upon timely request, the trier of fact shall by special verdict or specific
17 findings itemize by category and amount any damages assessed for incurred medical
18 expenses, rehabilitation costs, and loss of earnings. Damages assessed for any future
19 expenses, costs, and losses shall be itemized separately. If the verdict or findings
20 include any amount for such expenses, costs, and losses, a] THE TRIER OF FACT
21 SHALL ITEMIZE THE VERDICT TO REFLECT THE MONETARY AMOUNT INTENDED FOR
22 PAST MEDICAL EXPENSES, FUTURE MEDICAL EXPENSES, PAST LOSS OF EARNINGS,
23 FUTURE LOSS OF EARNINGS, NONECONOMIC DAMAGES, AND OTHER DAMAGES. A
24 party filing a motion for a new trial may object to the damages as excessive on the
25 ground that the claimant has been or will be paid, reimbursed, or indemnified to the
26 extent and subject to the limits stated in § 3-2A-05(h) of this subtitle. The court shall
27 hold a hearing and receive evidence on the objection. If the court finds from the
28 evidence that the damages are excessive on the grounds stated in § 3-2A-05(h) of this
29 subtitle, subject to the limits and conditions stated in § 3-2A-05(h) of this subtitle, it
30 may grant a new trial as to such damages or may deny a new trial if the claimant
31 agrees to a remittitur of the excess and the order required adequate security when
32 warranted by the conditions stated in § 3-2A-05(h) of this subtitle. In the event of a
33 new trial granted under this subsection, evidence considered by the court in granting
34 the remittitur shall be admissible if offered at the new trial and the jury shall be
35 instructed to consider such evidence in reaching its verdict as to damages. Upon a
36 determination of those damages at the new trial, no further objection to damages may
37 be made exclusive of any party's right of appeal. Except as expressly provided by
38 federal law, no person may recover from the claimant or assert a claim of subrogation
39 against a defendant for any sum included in a remittitur or awarded in a new trial on
40 damages granted under this subsection. Nothing in this subsection shall be construed
41 to otherwise limit the common law grounds for remittitur.

42 3-2A-08.

43 (a) Evidence of advanced payments made pursuant to § 19-104(b) of the
44 Insurance Article is not admissible in any arbitration or judicial proceeding for

1 damages due to medical injury until there is an award, in the case of arbitration
2 proceedings, or a verdict, in the case of judicial proceedings, in favor of the claimant
3 and against the person who made the advanced payments. Upon the finding of such
4 an award or verdict, the arbitration panel, or the trier of fact, shall make a finding of
5 total damages, and shall then deduct whatever amounts it finds were paid by or on
6 behalf of the defendants pursuant to § 19-104(b) of the Insurance Article. The net
7 amount, after this deduction, shall be entered as its award or verdict.

8 (b) (1) THE PROVISIONS OF THIS SUBSECTION DO NOT APPLY TO A VERDICT
9 FOR DAMAGES UNDER THIS SUBTITLE IN WHICH THE CAUSE OF ACTION ARISES ON
10 OR AFTER JUNE 1, 2004.

11 (2) [If] FOR AN AWARD OR VERDICT FOR DAMAGES UNDER THIS
12 SUBTITLE IN WHICH THE CAUSE OF ACTION AROSE BEFORE JUNE 1, 2004, IF the
13 award or verdict exceeds the amount of advanced payments and the arbitration panel
14 or the court finds that the advanced payments were reasonable, the panel or the court
15 may [(1)] order that the amount by which the award or verdict exceeds the amount of
16 advanced payments be paid over a period of time consistent with the needs of the
17 claimant, rather than in a lump sum, and [(2)] authorize, as part of its order, the
18 creation of a trust or other mechanism to assure the periodic payments. The panel or
19 court shall provide to the claimant the option to choose either a lump sum or
20 payments paid over a period of time.

21 (c) If the advanced payment exceeds the liability of the person making it, the
22 arbitration panel or the court on appeal may order such adjustments as justice may
23 require under the award or verdict, including, where appropriate, contribution by
24 other parties found to be liable. In no event shall an advance payment in excess of the
25 liability of the person making it be repayable by the person receiving it.

26 3-2A-08.1.

27 (A) (1) (I) AT ANY TIME NOT LESS THAN 45 DAYS BEFORE THE TRIAL
28 BEGINS, A PARTY DEFENDING AGAINST A CLAIM FOR A MEDICAL INJURY MAY SERVE
29 ON THE ADVERSE PARTY AN OFFER TO ALLOW JUDGMENT TO BE TAKEN AGAINST
30 THE DEFENDING PARTY FOR THE AMOUNT OF MONEY SPECIFIED IN THE OFFER,
31 WITH COSTS THEN ACCRUED.

32 (II) WHEN THE LIABILITY OF ONE PARTY TO ANOTHER HAS BEEN
33 DETERMINED BY VERDICT OR ORDER OR JUDGMENT, BUT THE AMOUNT OR EXTENT
34 OF THE LIABILITY REMAINS TO BE DETERMINED BY FURTHER PROCEEDINGS, THE
35 PARTY ADJUDGED LIABLE MAY MAKE AN OFFER OF JUDGMENT NOT LESS THAN 45
36 DAYS BEFORE THE COMMENCEMENT OF HEARINGS TO DETERMINE THE AMOUNT OR
37 EXTENT OF LIABILITY.

38 (B) (1) IF WITHIN 15 DAYS AFTER THE SERVICE OF THE OFFER TO ALLOW
39 JUDGMENT THE ADVERSE PARTY SERVES WRITTEN NOTICE THAT THE OFFER IS
40 ACCEPTED, EITHER PARTY MAY THEN FILE WITH THE COURT THE OFFER AND
41 NOTICE OF ACCEPTANCE TOGETHER WITH AN AFFIDAVIT OF SERVICE NOTIFYING
42 THE OTHER PARTIES OF THE FILING OF THE OFFER AND ACCEPTANCE.

1 (2) WHEN THE COURT RECEIVES THE FILINGS SPECIFIED IN
2 PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL ENTER JUDGMENT.

3 (C) (1) IF AN ADVERSE PARTY DOES NOT ACCEPT AN OFFER TO ALLOW
4 JUDGMENT WITHIN THE TIME SPECIFIED IN SUBSECTION (B)(1) OF THIS SECTION,
5 THE OFFER SHALL BE DEEMED WITHDRAWN AND EVIDENCE OF THE OFFER IS NOT
6 ADMISSIBLE EXCEPT IN A PROCEEDING TO DETERMINE COSTS.

7 (2) AN OFFER TO ALLOW JUDGMENT THAT IS NOT ACCEPTED DOES NOT
8 PRECLUDE A PARTY FROM MAKING A SUBSEQUENT OFFER TO ALLOW JUDGMENT
9 WITHIN THE TIME SPECIFIED IN THIS SECTION.

10 (D) IF THE VERDICT FINALLY OBTAINED BY THE ADVERSE PARTY WHO
11 RECEIVED AN OFFER TO ALLOW JUDGMENT IS NOT MORE FAVORABLE THAN THE
12 OFFER, THE ADVERSE PARTY WHO RECEIVED THE OFFER SHALL PAY THE COURT
13 COSTS AND REASONABLE ATTORNEY'S FEES OF THE PARTY MAKING THE OFFER
14 INCURRED AFTER THE MAKING OF THE OFFER.

15 3-2A-09.

16 (A) THIS SECTION APPLIES TO AN AWARD UNDER § 3-2A-05 OF THIS SUBTITLE
17 OR A VERDICT UNDER § 3-2A-06 OF THIS SUBTITLE FOR A CAUSE OF ACTION ARISING
18 ON OR AFTER JUNE 1, 2004.

19 (B) (1) AN AWARD OR VERDICT UNDER THIS SUBTITLE FOR NONECONOMIC
20 DAMAGES MAY NOT EXCEED \$500,000.

21 (2) THE LIMITATION ESTABLISHED UNDER PARAGRAPH (1) OF THIS
22 SUBSECTION SHALL APPLY IN THE AGGREGATE TO ALL CLAIMS FOR PERSONAL
23 INJURY AND WRONGFUL DEATH ARISING FROM THE SAME MEDICAL INJURY,
24 REGARDLESS OF THE NUMBER OF CLAIMS, CLAIMANTS, OR DEFENDANTS.

25 (3) (I) IN A JURY TRIAL, THE JURY MAY NOT BE INFORMED OF THE
26 LIMITATION ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

27 (II) IF THE JURY AWARDS AN AMOUNT FOR NONECONOMIC
28 DAMAGES THAT EXCEEDS THE LIMITATION ESTABLISHED UNDER PARAGRAPH (1) OF
29 THIS SUBSECTION, THE COURT SHALL REDUCE THE AMOUNT TO CONFORM TO THE
30 LIMITATION.

31 (C) (1) AN AWARD OR VERDICT FOR PAST MEDICAL EXPENSES SHALL
32 EXCLUDE ANY AMOUNT NOT ACTUALLY PAID BY OR ON BEHALF OF THE CLAIMANT
33 TO A HEALTH CARE PROVIDER.

34 (2) THE AWARD OR VERDICT FOR PAST OR FUTURE MEDICAL EXPENSES
35 SHALL EXCLUDE ANY AMOUNT FOR GOODS OR SERVICES THAT THE CLAIMANT HAS
36 RECEIVED, OR IS ENTITLED TO RECEIVE, UNDER THE FEDERAL INDIVIDUALS WITH
37 DISABILITIES EDUCATION ACT, PUBLIC LAW 105-17, AS AMENDED.

1 (3) THE AWARD OR VERDICT FOR PAST OR FUTURE LOSS OF EARNINGS
2 SHALL EXCLUDE ANY AMOUNT FOR FEDERAL, STATE, OR LOCAL INCOME TAXES OR
3 PAYROLL TAXES, INCLUDING SOCIAL SECURITY AND MEDICARE, THAT THE
4 CLAIMANT WOULD HAVE PAID ON THESE EARNINGS, DETERMINED AT THE TAX
5 RATES IN EFFECT FOR THE CLAIMANT AT THE TIME THE AWARD OR VERDICT IS
6 ENTERED.

7 (4) (I) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, AN
8 AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES SHALL BE BASED SOLELY ON
9 MEDICARE REIMBURSEMENT RATES IN EFFECT ON THE DATE OF THE AWARD OR
10 VERDICT FOR THE LOCALITY IN WHICH THE CARE IS TO BE PROVIDED, ADJUSTED
11 FOR INFLATION AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH.

12 (II) IF ON THE DATE OF THE AWARD OR VERDICT, THE MEDICARE
13 WAIVER UNDER § 1814(B) OF THE FEDERAL SOCIAL SECURITY ACT IS IN EFFECT, AN
14 AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES FOR HOSPITAL FACILITY
15 SERVICES SHALL BE BASED SOLELY ON THE RATES APPROVED BY THE HEALTH
16 SERVICES COST REVIEW COMMISSION IN EFFECT ON THE DATE OF THE AWARD OR
17 VERDICT FOR THE HOSPITAL FACILITY IN WHICH SERVICES ARE TO BE PROVIDED,
18 ADJUSTED FOR INFLATION IN ACCORDANCE WITH THE ANNUAL RATE UPDATES
19 APPROVED BY THE HEALTH SERVICES COST REVIEW COMMISSION.

20 (III) AN AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES FOR
21 NURSING FACILITY SERVICES SHALL BE BASED SOLELY ON THE STATEWIDE
22 AVERAGE PAYMENT RATE FOR THE MEDICAL ASSISTANCE PROGRAM DETERMINED
23 BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN EFFECT ON THE DATE
24 OF THE AWARD OR VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN
25 SUBPARAGRAPH (V) OF THIS PARAGRAPH.

26 (IV) AN AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES FOR
27 WHICH THERE IS NO MEDICARE REIMBURSEMENT RATE, HOSPITAL FACILITY RATE,
28 OR STATEWIDE AVERAGE PAYMENT SHALL BE BASED ON ACTUAL COST ON THE DATE
29 OF THE AWARD OR VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN
30 SUBPARAGRAPH (V) OF THIS PARAGRAPH.

31 (V) FUTURE MEDICAL EXPENSES SHALL BE ADJUSTED FOR
32 INFLATION FOR THE EXPENDITURE CATEGORY OF THE CONSUMER PRICE INDEX
33 PUBLISHED BY THE BUREAU OF LABOR STATISTICS TO WHICH THE EXPENSE
34 APPLIES.

35 (VI) THE ADJUSTMENT FOR INFLATION IN THIS PARAGRAPH SHALL
36 BE BASED ON THE AVERAGE RATE OF INFLATION FOR THE 5 YEARS IMMEDIATELY
37 PRECEDING THE AWARD OR VERDICT.

38 3-2A-10.

39 (A) THIS SECTION APPLIES TO AN AWARD UNDER § 3-2A-05 OF THIS SUBTITLE
40 OR A VERDICT UNDER § 3-2A-06 OF THIS SUBTITLE FOR A CAUSE OF ACTION ARISING
41 ON OR AFTER JUNE 1, 2004.

1 (B) SUBJECT TO THE PROVISIONS OF THIS SUBTITLE, A DEFENDANT SHALL
2 PAY AN AWARD OR VERDICT FOR NONECONOMIC DAMAGES AND FUTURE ECONOMIC
3 DAMAGES OF \$250,000 OR LESS AS A LUMP SUM WITH PAYMENTS FOR PAST
4 ECONOMIC DAMAGES.

5 (C) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, FOR AN
6 AWARD OR VERDICT FOR NONECONOMIC DAMAGES AND FUTURE ECONOMIC
7 DAMAGES OF MORE THAN \$250,000, THE ARBITRATION PANEL OR COURT SHALL:

8 (1) ORDER THE DEFENDANT TO PAY \$100,000 OF THE FUTURE ECONOMIC
9 DAMAGES AND NONECONOMIC DAMAGES AS A LUMP SUM WITH PAST ECONOMIC
10 DAMAGES;

11 (2) ORDER THE DEFENDANT TO PAY FUTURE ECONOMIC DAMAGES AND
12 NONECONOMIC DAMAGES OF MORE THAN \$100,000 PERIODICALLY TO THE CLAIMANT
13 IN THE FORM OF AN ANNUITY; AND

14 (3) ENTER AS THE AMOUNT OF THE AWARD OR VERDICT FOR FUTURE
15 ECONOMIC DAMAGES AND NONECONOMIC DAMAGES OF MORE THAN \$100,000, THE
16 PURCHASE PRICE OF AN ANNUITY PURCHASED BY THE DEFENDANT OR THE
17 DEFENDANT'S INSURER UNDER THIS SUBSECTION.

18 (D) SUBJECT TO SUBSECTION (F) OF THIS SECTION, TO FUND FULLY FUTURE
19 ECONOMIC DAMAGES AND NONECONOMIC DAMAGES IN EXCESS OF \$250,000, THE
20 DEFENDANT OR THE DEFENDANT'S INSURER SHALL PURCHASE AN ANNUITY FOR
21 THE AMOUNT OF THE FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES
22 LESS THE \$100,000 PAID UNDER SUBSECTION (C)(1) OF THIS SECTION, WHICH
23 PRODUCES PERIODIC PAYMENTS FOR:

24 (1) FUTURE MEDICAL EXPENSES AND NONECONOMIC DAMAGES,
25 DIVIDED BY THE LESSER OF THE NUMBER OF YEARS FOR WHICH THE CLAIMANT
26 WILL NEED MEDICAL TREATMENT OR THE LIFE EXPECTANCY OF THE CLAIMANT AS
27 DETERMINED UNDER SUBSECTION (E)(2)(I) OF THIS SECTION; AND

28 (2) FUTURE LOSS OF EARNINGS, DIVIDED BY THE LESSER OF THE
29 NUMBER OF YEARS FOR WHICH THE CLAIMANT WILL SUFFER A LOSS OF EARNINGS
30 OR THE WORKING LIFE OF THE CLAIMANT AS DETERMINED UNDER SUBSECTION
31 (E)(2)(I) OF THIS SECTION.

32 (E) (1) THE PERIODIC PAYMENTS FOR FUTURE LOSS OF EARNINGS MAY NOT
33 COMMENCE UNTIL THE COMMENCEMENT DATE OF THE WORKING LIFE OF THE
34 CLAIMANT.

35 (2) (I) FOR PURPOSES OF SUBSECTION (D) OF THIS SECTION AND
36 PARAGRAPH (1) OF THIS SUBSECTION, THE LIFE EXPECTANCY OF THE CLAIMANT,
37 THE WORKING LIFE OF THE CLAIMANT, THE COMMENCEMENT DATE OF THE
38 WORKING LIFE OF THE CLAIMANT, OR THE DURATION OF THE MEDICAL EXPENSES
39 AND LOST WAGES SHALL BE THOSE ASSERTED BY THE CLAIMANT TO THE
40 ARBITRATION PANEL OR AT TRIAL IN SUPPORT OF THE CLAIM FOR FUTURE
41 ECONOMIC DAMAGES.

1 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH,
2 IN AN ACTION SUBJECT TO THIS SUBTITLE, THE DEFENDANT MAY INTRODUCE
3 EVIDENCE OF THE LIFE EXPECTANCY OF THE CLAIMANT, THE WORKING LIFE OF THE
4 CLAIMANT, AND THE COMMENCEMENT OF THE WORKING LIFE OF THE CLAIMANT,
5 OR THE DURATION OF THE MEDICAL EXPENSES AND LOST WAGES.

6 (F) FOR A SURVIVAL OR WRONGFUL DEATH ACTION:

7 (1) NONECONOMIC DAMAGES SHALL BE PAID AT THE SAME TIME AS
8 PAST ECONOMIC DAMAGES; AND

9 (2) THE PROVISIONS OF THIS SECTION APPLY ONLY TO FUTURE
10 ECONOMIC DAMAGES EXCEEDING \$250,000.

11 (G) THE DEFENDANT OR THE DEFENDANT'S INSURER MAY PURCHASE
12 MULTIPLE ANNUITIES IF, IN THE AGGREGATE, THE ANNUITIES FULLY FUND THE
13 PORTION OF THE AWARD OR VERDICT FOR FUTURE ECONOMIC DAMAGES AND
14 NONECONOMIC DAMAGES IN EXCESS OF \$100,000.

15 (H) AN ANNUITY PURCHASED UNDER THIS SECTION SHALL HAVE A
16 GUARANTEED TERM EQUAL TO THE LESSER OF:

17 (1) THE LIFE EXPECTANCY OF THE CLAIMANT AS ASSERTED BY THE
18 CLAIMANT TO THE ARBITRATION PANEL OR AT TRIAL IN SUPPORT OF THE CLAIM FOR
19 FUTURE ECONOMIC DAMAGES; OR

20 (2) (I) FOR FUTURE MEDICAL EXPENSES, THE NUMBER OF YEARS FOR
21 WHICH THE CLAIMANT WILL NEED MEDICAL TREATMENT; AND

22 (II) FOR FUTURE LOSS OF EARNINGS, THE NUMBER OF YEARS FOR
23 WHICH THE CLAIMANT WILL SUFFER A LOSS OF EARNINGS.

24 (I) THE DEFENDANT'S INSURER SHALL BE OBLIGATED TO PURCHASE AN
25 ANNUITY UNDER THIS SECTION ONLY TO THE EXTENT OF THE COVERAGE THE
26 INSURER IS OBLIGATED TO PROVIDE UNDER THE INSURANCE POLICY ISSUED TO THE
27 DEFENDANT.

28 (J) THE DEFENDANT OR THE DEFENDANT'S INSURER SHALL PURCHASE AN
29 ANNUITY FROM AN INSURER THAT HAS ONE OF THE FOLLOWING RATINGS FROM
30 TWO OF THE FOLLOWING RATING ORGANIZATIONS:

31 (1) A.M. BEST COMPANY: A++ OR A+;

32 (2) FITCH INC.: AAA, AA+, AA, OR AA-;

33 (3) MOODY'S INVESTORS SERVICE CLAIMS PAYING RATING: AAA, AA1,
34 AA2, OR AA3;

35 (4) STANDARD & POOR'S CORPORATION INSURER CLAIMS PAYING
36 RATING: AAA, AA+, AA, OR AA-; OR

1 (5) IF AGREED TO BY THE CLAIMANT, A RATING FROM ANOTHER
2 NATIONAL RATING ORGANIZATION IF THE RATING AND THE RATING ORGANIZATION
3 ARE FOUND TO BE APPROPRIATE BY THE COURT.

4 (K) THE ARBITRATION PANEL OR COURT SHALL APPROVE AN ANNUITY
5 PURCHASED BY THE DEFENDANT OR THE DEFENDANT'S INSURER IF THE ANNUITY:

6 (1) MEETS THE REQUIREMENTS OF THIS SUBSECTION; AND

7 (2) WILL AT ALL TIMES BE FULLY SECURED BY ASSETS:

8 (I) HELD IN A VALIDLY ESTABLISHED SEPARATE ACCOUNT THAT
9 MAY NOT BE CHARGEABLE WITH LIABILITIES ARISING OUT OF ANY OTHER BUSINESS
10 THAT THE INSURER MAY CONDUCT; OR

11 (II) IN WHICH THE CLAIMANT HAS A PERFECTED SECURITY
12 INTEREST.

13 (L) THE PURCHASE OF AN ANNUITY BY THE DEFENDANT OR THE
14 DEFENDANT'S INSURER IN ACCORDANCE WITH THE TERMS OF THIS SECTION SHALL
15 BE DEEMED TO HAVE FULLY SATISFIED THE PORTION OF THE AWARD OR VERDICT
16 FOR FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES IN EXCESS OF
17 \$100,000.

18 (M) THE PROVISIONS OF §§ 11-108 AND 11-109 OF THIS ARTICLE DO NOT APPLY
19 TO AN AWARD OR VERDICT FOR DAMAGES UNDER THIS SUBTITLE IN WHICH THE
20 CAUSE OF ACTION ARISES ON OR AFTER JUNE 1, 2004.

21 [3-2A-09.] 3-2A-11.

22 [The] EXCEPT FOR § 3-2A-09 OF THIS SUBTITLE, THE provisions of this subtitle
23 shall be deemed procedural in nature and shall not be construed to create, enlarge, or
24 diminish any cause of action not heretofore existing, except the defense of failure to
25 comply with the procedures required under this subtitle.

26 11-108.

27 (c) An award by the health claims arbitration panel in accordance with [§
28 3-2A-06] § 3-2A-05 of this article FOR DAMAGES IN WHICH THE CAUSE OF ACTION
29 AROSE BEFORE JUNE 1, 2004, shall be considered an award for purposes of this
30 section.

31 (E) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO AN ARBITRATION
32 AWARD OR VERDICT UNDER TITLE 3, SUBTITLE 2A OF THIS ARTICLE FOR DAMAGES IN
33 WHICH THE CAUSE OF ACTION ARISES ON OR AFTER JUNE 1, 2004.

34 11-109.

35 (c) (1) The court [or the health claims arbitration panel] may order that all
36 or part of the future economic damages portion of the award be paid in the form of

1 annuities or other appropriate financial instruments, or that it be paid in periodic or
2 other payments consistent with the needs of the plaintiff, funded in full by the
3 defendant or the defendant's insurer and equal when paid to the amount of the future
4 economic damages award.

5 (2) In the event that the court [or panel] shall order that the award for
6 future economic damages be paid in a form other than a lump sum, the court [or
7 panel] shall order that the defendant or the defendant's insurer provide adequate
8 security for the payment of all future economic damages.

9 (3) The court [or panel] may appoint a conservator under this
10 subsection for the plaintiff, upon such terms as the court [or panel] may impose, who
11 shall have the full and final authority to resolve any dispute between the plaintiff and
12 the defendant or the defendant's insurer regarding the need or cost of expenses for the
13 plaintiff's medical, surgical, custodial, or other care or treatment.

14 [(d)] (4) If the plaintiff [under this section] dies before the final periodic
15 payment of an award is made, the unpaid balance of the award for future loss of
16 earnings shall revert to the estate of the plaintiff and the unpaid balance of the award
17 for future medical expenses shall revert to the defendant or to the defendant's insurer
18 if the insurer provided the funds for the future damages award.

19 (D) IF THE HEALTH CLAIMS ARBITRATION PANEL AWARDS FUTURE
20 ECONOMIC DAMAGES IN ACCORDANCE WITH § 3-2A-05 OF THIS ARTICLE FOR
21 DAMAGES IN WHICH THE CAUSE OF ACTION ARISES BEFORE JUNE 1, 2004, THE PANEL
22 MAY ORDER THAT FUTURE ECONOMIC DAMAGES BE PAID IN ACCORDANCE WITH THE
23 PROVISIONS OF SUBSECTION (C) OF THIS SECTION.

24 (E) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO AN ARBITRATION
25 AWARD OR VERDICT UNDER TITLE 3, SUBTITLE 2A OF THIS ARTICLE FOR DAMAGES IN
26 WHICH THE CAUSE OF ACTION ARISES ON OR AFTER JUNE 1, 2004.

27 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
28 Act or the application thereof to any person or circumstance is held invalid for any
29 reason in a court of competent jurisdiction, the invalidity does not affect other
30 provisions or any other application of this Act which can be given effect without the
31 invalid provision or application, and for this purpose the provisions of this Act are
32 declared severable.

33 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
34 effect June 1, 2004.